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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

STATE OF OREGON, by and through the
Oregon Health Authority and the Oregon
Department of Human Services;
Plaintiff,

vs.

ORACLE AMERICA, INC., a Delaware
corporation, and
MYTHICS, INC., a Virginia corporation,
Defendants.

No. 15 CV 03287

**PRELIMINARY
INJUNCTION ORDER**

This matter came before the Court on February 24 and 25, 2015, on plaintiff’s Motion for an Order to Show Cause Why Preliminary Injunction Should Not Issue. Plaintiff, State of Oregon by and through the Oregon Health Authority and the Department of Human Services (“State”), was represented by Lisa A. Kaner, Jeffrey M. Edelson, and Dallas DeLuca, Special Assistant Attorneys General. Defendants received actual notice of the hearing. Defendant Oracle America, Inc. (“Oracle”) appeared by and through its lawyers Robert S. Shwartz, *pro hac vice*, Brenna K. Legaard, and Jeffery S. Eden. Defendant Mythics, Inc. (“Mythics”) appeared by and through its lawyer Dayna E. Underhill. Having considered the briefing, declarations, documents, testimony and arguments presented, the Court makes the following findings of fact and conclusions of law:

I. Findings of Fact.

The parties presented evidence in the form of documents, declarations, and courtroom testimony. The State filed Plaintiff’s Motion for Order to Show Cause Why Preliminary Injunction Should Not Issue, and Memorandum in Support, Amended

1 Complaint, Plaintiff's Motion for Preliminary Injunction and Memorandum in Support, and
2 Supplemental and Corrected Declaration of Sarah S. Miller. Mythics filed its Memorandum.
3 in Opposition, Declaration of Ryan M. Williams, and Declaration of Jared D. Barnes. Oracle
4 filed its Opposition, Declaration of Jason Lorenzo, Declaration of Marti Menacho,
5 Declaration of George Polisner, Declaration of Jodee Whitby, and Declaration of Brenna K.
6 Legaard. The Court received during the courtroom hearing the State's exhibits 1 - 6, 8 - 11,
7 13 - 18, and 20 - 22, and Oracle's exhibits B, E, J, K, L, N, S, and V, all of which are
8 memorialized in the Exhibit List filed by the Court February 25, 2015.

9 The Court considered the courtroom testimony of the State's witnesses, Alex Pettit,
10 the Chief Information Officer for the State and Interim Chief Information Officer for Cover
11 Oregon, Sarah S. Miller, the Chief Operating Officer for Technology at the Oregon
12 Department of Human Services and MAGI Medicaid System Transfer Project Director at the
13 Oregon Health Authority, and Judy Mohr Peterson, Oregon's State Medicaid Director; and of
14 Oracle's witnesses, Martha "Marti" Menacho, Oracle Vice President, Managed Cloud
15 Services Customer Management, and Jason Lorenzo, Oracle Managed Cloud Services
16 Renewal Representative.

17 The State, by and through the Oregon Health Authority ("OHA") and the Oregon
18 Department of Human Services ("DHS"), has presented prima facie evidence establishing the
19 following:

20 1. Oracle, through its Oracle Managed Cloud Services, provides hosting
21 services. "Hosting" means that Oracle provides all of the monitoring, support and
22 maintenance necessary to maintain that system comprised of a network of hardware and
23 software.

24 2. The State entered into multiple contracts with Defendant Mythics, Dell
25 Marketing LP ("Dell") and Defendant Oracle, related to the provision of systems for the
26 processing of Medicaid applications and creation of a health insurance exchange in Oregon.

1 3. The State purchased Oracle hosting services via Dell, who purchased
2 them from Mythics, who, in turn, purchased them from Oracle. The State is considered the
3 end user of those products and services.

4 4. The State has a three-year contract, an initial year with two one-year
5 optional renewals, from February 28, 2012, through February 28, 2015, for Oracle to provide
6 hosting services to the State via a contract through Mythics and Dell. Under the Oracle On
7 Demand and Exa-Platform Agreement, Oracle hosts a system that the State uses to process
8 enrollments of eligible Oregonians in Medicaid. To support the enrollment processing system,
9 Oracle provides to the State all of the monitoring, support and maintenance necessary to
10 maintain that system comprised of a network of hardware and software.

11 5. On September 22, 2014, defendant Oracle made a promise to the State
12 that it would extend for twelve months Oracle's hosting services for the State, through
13 February 2016. Specifically, Oracle agreed to extend for twelve months its hosting of Oracle
14 servers on which the State runs Oracle software, including software for the State's Medicaid
15 enrollment.

16 6. Subsequent to that date, the State and Oracle communicated regarding
17 documenting the additional year of hosting. Also, the State and Oracle communicated
18 concerning a twelve-month extension of Oracle's technical support services for the software
19 and the hardware that Oracle was hosting. Oracle agreed to extend the technical support
20 services contracts.

21 7. The State relied on Oracle's promise to provide an additional year of
22 the same technical support services, licenses and hosting for the State of Oregon's Medicaid
23 enrollment system. The State, after receiving Oracle's promise, began a long-term plan to
24 transition Medicaid enrollment from the Oracle hosted services to a new system that the State
25 will acquire from the Commonwealth of Kentucky. The new system is expected to be
26 operational on January 1, 2016, for enrolling Oregonians in Medicaid. Relying on Oracle's

1 promise, the State did not plan to transition from Oracle’s hosted services before January 1,
2 2016, and it has no ability to enroll Oregonians eligible for Medicaid other than through the
3 Oracle hosted Medicaid enrollment system until at least January 1, 2016.

4 8. The State agreed to pay as much as it paid in the prior year for the
5 hosting service for February 28, 2015, through February 28, 2016. The State also agreed to
6 pay for the technical support services that are required in conjunction with hosting services.
7 Oracle requires any customer of hosting services to also purchase technical support services.

8 9. Oracle has threatened to breach its promise to extend hosting services
9 to February 28, 2016, by announcing on February 5, 2015, that it had decided not to provide
10 the OHA hosting services after February 28, 2015.

11 10. Further, Oracle has breached its prior agreement with the State by
12 failing to provide a decommissioning plan prior to the end-of-service date under the
13 February 28, 2012, contract.

14 11. If Oracle carries through on its threat to cease providing the hosting
15 services before the State implements its transition to the new system, there is a substantial
16 likelihood that Medicaid-eligible Oregonians will be deprived of public benefits to which
17 they are entitled under federal and state law, and some will be deprived of medical care and
18 services which they need.

19 12. Oracle’s threatened conduct could place the State in violation of
20 federal and state mandates to provide Medicaid enrollment to eligible Oregonians thereby
21 jeopardizing substantial federal funding necessary to provide Medicaid coverage and
22 complete the transition of the enrollment system.

23 13. Mythics was not on the September 22, 2014, telephone call during
24 which Oracle made the promise to the State.

1 14. Mythics agrees that it will cooperate with and not obstruct the
2 continuous provision of Oracle hosting services to the State to the extent ordered by this
3 Court or to the extent agreed to by the State and Oracle.

4 15. Oracle has stipulated that Oracle can provide the services subject to
5 this Order without Mythics being subject to this Order.

6 **II. Legal Standard.**

7 ORCP 79 A provides for a preliminary injunction “[w]hen it appears that a party is
8 entitled to relief demanded in a pleading, and such relief, or any part thereof, consists of
9 restraining the commission or continuance of which during the litigation would produce
10 injury to the party seeking relief” or “[w]hen it appears that the party against whom a
11 judgment is sought is doing or threatens, or is about to do or is procuring or suffering to be
12 done, some act in violation of the rights of a party seeking judgment concerning the subject
13 matter of the action and tending to render the judgment ineffectual.”

14 “Injunctive relief depends on broad principles of equity and may, in the discretion of
15 the court, be granted or denied in accordance with the justice and equity of the case.”

16 *Hickman v. Six Dimension Custom Homes, Inc.*, 273 Or 894, 898, 543 P2d 1043 (1975),
17 *citing Hyland v. City of Eugene*, 179 Or 567, 573 (1946). The court, in deciding whether to
18 grant a preliminary injunction, “exercise[s] * * * discretion in balancing conveniences, in
19 affording protection against needless injury, in preserving the subject matter of the suit, and
20 not infrequently in preserving the status quo.” *State ex rel. Pac. Tel. & Tel. Co. v. Duncan*,
21 191 Or 475, 500, 230 P2d 773, 784 (1951). “[T]he essential conditions for granting such
22 temporary injunctive relief are that the complaint allege facts which appear to be sufficient to
23 constitute a cause of action for injunction, and that on the entire showing from both sides it
24 appear, in view of all the circumstances, that the injunction is reasonably necessary to protect
25 the legal rights of the plaintiff pending the litigation * * *.” *State ex rel. Tidewater Shaver*

1 *Barge Lines v. Dobson*, 195 Or 533, 580-81, 245 P2d 903, 924-25 (1952) (quoting 28 Am.
2 Jur. Injunctions, 207, § 14).

3 **III. Conclusions of Law.**

4 After hearing the testimony and reviewing the exhibits, and then having had the
5 chance to make credibility determinations of the witnesses when testifying in court, the Court
6 concludes that the testimony of Dr. Pettit and Ms. Miller is more convincing. The State has
7 set forth a case for promissory estoppel and is likely to succeed on the merits on that claim.
8 Concerning the second count of the claim for breach of contract, the Court concludes that
9 Oracle has failed to comply with its contractual agreement to follow through on the
10 decommission tasks. Concerning the third count for the claim for breach of contract, because
11 I find that Oracle has failed to comply with its contractual agreement to follow through on
12 the decommission tasks I conclude that the State is likely to prevail on breach of implied
13 covenant of good faith and fair dealing by failing to prepare a decommissioning schedule and
14 transition plan. As of this time, the Court does not conclude that the State is more likely than
15 not to succeed on the merits for its claim for breach of an express agreement to renew.

16 A preliminary injunction is appropriate when necessary to maintain the status quo.
17 Without a preliminary injunction, the remedy that plaintiff seeks would be frustrated.
18 Plaintiff could succeed at trial and get a judgment for the very relief it seeks, but that relief
19 would be frustrated without a preliminary injunction.

20 In addition, because deprivations of medical care constitute irreparable harm and
21 harm to the public interest, ORS 414.018(2)(c), the State has demonstrated that there is a
22 substantial likelihood of irreparable harm if Oracle and Mythics cease providing hosting
23 services. The balance of equities favors the State because Oracle and Mythics will be
24 compensated for continuing to provide services, while the hardship to the State and its
25 citizens if the injunction is denied will be extraordinary. An injunction is in the public
26 interest because it will prevent serious injustice to an already vulnerable population and will

1 prevent the State from being out of compliance with federal and state law. An injunction to
2 maintain hosting services is required to maintain the *status quo* and the State's right to a
3 remedy.

4 **ORDER**

5 NOW, THEREFORE,

6 IT IS HEREBY ORDERED that:

7 1. The State has met its burden under ORCP 79 A on its cause of action against
8 Oracle for promissory estoppel and breach of contract to follow through on decommission
9 tasks.

10 2. Oracle is enjoined from ceasing to provide hosting services or On Demand
11 Services to the State through OHA, or changing or otherwise restricting the State's access to
12 and use of the servers, applications and environments, as set forth in the prior contracts, and
13 as are necessary for operation of Oregon's Medicaid enrollment system for the period of
14 February 28, 2015 through and including February 28, 2016, subject to any further order of
15 this Court.

16 3. The services provided by Oracle to the State pursuant to this Order shall be
17 rendered pursuant to a written agreement between the parties, including the amounts that the
18 State shall pay to Oracle (either directly or indirectly through an Oracle reseller) for such
19 services. If the parties are unable to agree to a price for services subject to this Order, the
20 parties shall provide separate proposals to the Court on or before March 30, 2015.

21 4. All monies paid by the State to Oracle (either directly or indirectly through an
22 Oracle reseller) shall not be subject to any claim for damages or as an element for a claim for
23 damages in any proceeding between the parties.

24 5. The execution of a written agreement pursuant to this Order does not waive,
25 augment, or otherwise alter any party's position with respect to immunity in any other
26 proceeding.

1 6. Mythics agrees to cooperate fully with the State and Oracle in the
2 implementation of this Order.

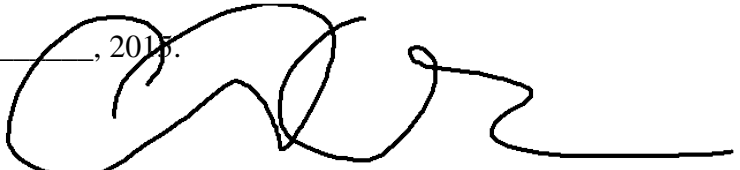
3 7. The State's claims against Mythics shall be dismissed without prejudice and
4 without an award of costs and fees by separate order.

5 IT IS FURTHER ORDERED that no bond or undertaking is required pursuant to
6 ORS 22.010.

7 This preliminary injunction expires February 28, 2016.

8 IT IS SO ORDERED, this ____ day of February, 2015. Signed: 2/27/2015 04:12 PM

9
10 DATED this ____ day of _____, 2015.

11  A large, stylized handwritten signature in black ink, consisting of several loops and a long trailing line that extends to the right.
12 _____
13 Honorable Courtland Geyer
14 Circuit Court Judge

15 This Preliminary Injunction Order is issued at _____ a.m. / .p.m. on Friday,
16 February 27, 2015.
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CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2015, I made service of the **[Proposed]**

PRELIMINARY INJUNCTION ORDER on the party/ies listed below in the manner indicated:

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DATED this 27th day of February, 2015.

/s/ Lisa A. Kaner

Lisa A. Kaner, OSB #881373
Special Assistant Attorneys General for Plaintiff